Office Supreme Court, U.S.
FILED
DEC 8 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 449

THE ASSOCIATED PRESS, ET AL,
Appellants,

versus

EDWIN A. WALKER,
Appellee.

On Appeal from the Court of Appeal, Second Circuit, State of Louisiana.

APPLICATION FOR REHEARING.

BILLY R. PESNELL,
Post Office Box 1574,
867 Texas Eastern Building,
Shreveport, Louisiana,
Attorney for The Associated Press.

ASHTON PHELPS,
Hibernia Bank Building,
New Orleans, Louisiana,
Attorney for The Times-Picayune Publishing Corporation.

HARGROVE, GUYTON, VAN HOOK and RAMEY,
Post Office Box 1574,
867 Texas Eastern Building,
Shreveport, Louisiana,
Of Counsel for The Associated Press.

PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS,
Hibernia Bank Building,
New Orleans, Louisiana,
Of Counsel for The Times-Picayune Publishing Corporation.

HAUSER PRINTING CO., INC., NEW ORLEANS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 449

THE ASSOCIATED PRESS, ET AL,

Appellants,

versus

EDWIN A. WALKER,

Appellee.

On Appeal from the Court of Appeal, Second Circuit, State of Louisiana.

APPLICATION FOR REHEARING

The petition of THE ASSOCIATED PRESS and THE TIMES-PICAYUNE PUBLISHING CORPORATION, respectfully asks the Court to reconsider its refusal, on November 16, 1964, to note jurisdiction of their appeal. Since that time, on or about Monday, November 23, 1964, the Supreme Court of Georgia, in the case of *Rives v. Atlanta Newspapers, Inc.*, has rendered a decision squarely in conflict with the decision of the Supreme Court of Louisiana on the basic issue of the applicability of the "single publication" doctrine as applied to newspapers. The Georgia decision was four to three in favor of application of that doctrine, while the Louisiana Supreme Court decided four to two against the application of the doctrine.

Your Honors will almost certainly be met with an application for certiorari from the *Rives* case, and it seems to us appropriate to consider both cases at the same time. In any event, the issue is one directly related to the First Amendment to the Constitution of the United States, in very much the same manner as was the definition of malice and the protection of fair comment on the activities of public officials in the *Sullivan* and *Garrison* cases. If anything, the protection of newspapers from suits in outlying areas, both within and without their home States is a matter of more vital concern. As the Supreme Court of Georgia said in the *Rives* case:

> "To allow a suit for damages each time a different person sees the newspaper would unreasonably shackle the press and might quickly bankrupt it thus doing great harm to both the publisher and the reader."

We had sought originally, and again urge the Court, to consider our appeal from the point of view of the First Amendment to the Constitution of the United States involving freedom of speech and the press.

The other point to which our appeal was directed and which we then believed, and still believe, confers jurisdiction as of right on this Court is Title 28 U.S.C.A., Section 1257(2), allowing appeals from State court decisions sustaining the validity of State statutes alleged to violate the United States Constitution. See our original Jurisdictional Statement, pages 2, 3, 4 and 5.

We had thought and argued that the matter of whether or not these defendant-applicants could be forced to trial in any parish in the State of Louisiana presented a constitutional issue as to which a right of appeal lay. The present case, involving as it does, the activities of

Major General Edwin A. Walker, plaintiff, in the Oxford, Mississippi incidents relating to the admission of James Meredith, is obviously fraught with political overtones. To allow this plaintiff to select arbitrarily as a forum Caddo Parish where, according to the latest presidential election returns, President Johnson received less than twenty percent of the vote, rather than Orleans Parish, where President Johnson received over fifty percent of the vote, and where the libel, if any, was actually committed, seems to us to work an injustice in libel cases in violation of the First Amendment protecting freedom of speech and of the press.

There is no other field of tort law in which the Louisiana courts permit a plaintiff to select a forum merely on the basis of incidental damage rather than tort or principal damage. This discrimination alone, we believe, justifies the hearing of our case.

Had the Louisiana Legislature enacted a statute which said that venue in all tort cases except those involving libel actions must be had in the parish (county) where the damage was done, except that in libel cases venue could be had in any parish wherein there was incidental damage, we have no doubt but that this Court would have found such a statute to be a violation of the Constitution and would have noted jurisdiction under 28 U.S.C.A. Section 1257(2). This the Legislature of Louisiana did not do. On the contrary, that legislature provided, in Article 74 of the Louisiana Code of Civil Procedure, that:

> "An action for the recovery of damages for an offense or quasi offense may be brought in the parish where the wrongful conduct occurred, or in the parish where the damages were sustained. An action to enjoin the commission of an offense or

quasi offense may be brought in the parish where the wrongful conduct occurred or may occur. As used herein, the words 'offense or quasi offense' include a nuisance and a violation of Article 667 of the Civil Code. As amended Acts 1962, No. 92, § 1."

However, the Louisiana Supreme Court, by a vote of four to two, the Chief Justice dissenting, has, in effect, interpreted Article 74 as though the legislature had adopted the hypothetical statute.

The issues involved in this case and in the *Rives* case arise over and over again, and we respectfully urge the Court to grant us a hearing to set at rest this fundamental issue.

Dated: December 7, 1964

BILLY R. PESNELL,
Post Office Box 1574,
867 Texas Eastern Building,
Shreveport, Louisiana,
Attorney for The Associated Press.

ASHTON PHELPS,
Hibernia Bank Building,
New Orleans, Louisiana,
Attorney for The Times-Picayune Publishing Corporation.

CERTIFICATE OF COUNSEL

The undersigned, Ashton Phelps, attorney for Petitioner, The Times-Picayune Publishing Corporation, hereby certifies that the petition for rehearing filed in this cause is presented in good faith, that in his judgment said petition is restricted to the grounds specified in paragraph 2 of Rule 33 as amended, and that said petition for rehearing is not interposed for delay.

Attorney for Petitioner, The Times-Picayune Publishing Corporation.

PROOF OF SERVICE

I, Ashton Phelps, attorney for The Times-Picayune Publishing Corporation, one of the petitioners and joint appellants herein, and a member of the bar of the Supreme Court of the United States, certify that on the 7th day of December, 1964, I served a copy of this Application for Rehearing on Edwin A. Walker, plaintiff and appellee herein, by mailing the same in a duly and properly addressed envelope, first class postage prepaid, to his attorney of record:

Mr. W. Scott Wilkinson
Wilkinson, Lewis, Woods and Carmody
Post Office Box 1707
Shreveport, Louisiana

New Orleans, Louisiana, December 7, 1964.

ASHTON PHELPS